

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§
	§
Petitioner Below-	§ No. 667, 2009
Appellant,	§
	§
v.	§
	§ Court Below—Superior Court
MATTHEW DUTTON and	§ of the State of Delaware,
PERRY PHELPS,	§ in and for Sussex County
	§ C.A. No. S09-01-010
Respondents Below-	§
Appellees.	§

Submitted: December 7, 2009
Decided: December 16, 2009

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 16th day of December 2009, upon consideration of the appellant's motion to proceed in forma pauperis and the State's motion to compel immediate payment of full filing fees and related relief, it appears to the Court that:

(1) The appellant, James Arthur Biggins, filed this appeal from the Superior Court's dismissal of his complaint for failure to pay the required filing fee. The Superior Court had denied Biggins' motion to file his complaint without prepayment of the filing fee on the ground that Biggins was statutorily precluded from proceeding *in forma pauperis* under 10 Del.

C. § 8804(f) because, on three or more prior occasions, Biggins had filed complaints in Delaware courts that were dismissed as being frivolous. The Superior Court further concluded that there was nothing in Biggins' most recent complaint¹ to reflect that Biggins had been in "imminent danger of serious physical injury" at the time his complaint was filed.²

(2) Pending before this Court presently are Biggins' motion to proceed *in forma pauperis* in this appeal and the State's motion to compel immediate payment of the full filing fee. We find it unnecessary to address either motion because we find it manifest on the face of Biggins' opening brief that this appeal is without merit.³ There was sufficient evidence to support the trial court's conclusion that Biggins' had filed three or more prior complaints that had been dismissed either as being frivolous or for failing to state a claim. Moreover, Biggins' complaint did not allege that he was in imminent danger of serious physical injury at the time his complaint

¹ Biggins' complaint alleged that prison officials did not act quickly enough after Biggins injured the inside of his mouth and his lips with a plastic eating utensil called a "spork."

² See 10 Del. C. § 8804(f) (Supp. 2008) (providing that "In no event shall a prisoner file a complaint...in forma pauperis if the prisoner has, on 3 or more prior occasions, while incarcerated...brought an action...that was dismissed on the grounds that it was frivolous...unless the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed.)

³ See Del. Supr. Ct. R. 25(b) (permitting the Court to affirm a trial court's judgment *sua sponte* if it is manifest on the face of the opening brief that the appeal is without merit).

was filed in order to overcome the “three strikes” prohibition against the filing of another *in forma pauperis* complaint found in 10 Del. C. § 8804(f).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED. The motion to proceed *in forma pauperis* and the motion to compel immediate payment of the full filing fee are MOOT.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice